

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Alexander Gomez,

Plaintiff,

Case No.: **1:24-cv-01556-LGS**

-v-

**Kedo LLC, and
El Paso 116 Corp,**

**DEFAULT FINAL JUDGMENT
AGAINST DEFENDANT
KEDO LLC AND EL PASO 116 CORP.**

Defendants.

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FINAL DEFAULT JUDGMENT

THIS ACTION, having been commenced on February 29, 2024 by the filing of the Complaint [DE#1] having been filed on February 29, 2024 against the subject property owned and leased by the Defendants at *237 E 116th St, New York, NY 10029*; and the Complaint having been served on Defendant **Kedo LLC** and Defendant **El Paso 116 Corp** on March 5, 2024 via the Secretary of State as their authorized agent for service of process, and with proof of service having been filed on April 10, 2024 [DE#8 & DE#10], and the Defendants having not appeared or answered the Complaint [DE#1], and the time for answering the Complaint [DE#1] having [and Defendants having failed to appear at the show-cause hearing on July 10, 2024,](#) expired on March 26, 2024, it is hereby

ORDERED, ADJUDGED, and DECREED that the Plaintiff have Final Default Judgment against Defendant, Defendant **Kedo LLC** and Defendant **El Paso 116 Corp** (hereinafter referred to as “Defendant”), as follows:

A) Defendants shall be required apply for, obtain, and cause the removal and remediation the following barriers to access which exist in violation of Title III of the Americans with

of this Final Default Judgment:

1. Inaccessible entrance.
 2. Accessible route to establishment not provided as required.
 3. Accessible means of egress not provided as required.
 4. Existing steps at interior side of entrance door act as a barrier to accessibility.
 5. Required ramp not provided for steps at interior side of entrance door.
- ADAAG 206 Accessible Routes ADAAG 206.1 General.
Accessible routes shall be provided in accordance with 206 and shall comply with Chapter 4.
- ADAAG 206.2 Where Required.
Accessible routes shall be provided where required by 206.2.
- ADAAG 206.2.1 Site Arrival Points.
At least one accessible route shall be provided within the site from accessible parking spaces and accessible passenger loading zones; public streets and sidewalks; and public transportation stops to the accessible building or facility entrance they serve.
- ADAAG 206.4 Entrances.
Entrances shall be provided in accordance with 206.4. Entrance doors, doorways, and gates shall comply with 404 and shall be on an accessible route complying with 402.
- ADAAG 207 Accessible Means of Egress ADAAG 207.1 General.
Means of egress shall comply with section 1003.2.13 of the International Building Code (2000 edition and 2001 Supplement) or section 1007 of the International Building Code (2003 edition) (incorporated by reference, "Referenced Standards" in Chapter 1).
- ADAAG 402 Accessible Routes ADAAG 402.1 General.
Accessible routes shall comply with 402.
- ADAAG 402.2 Components.
Accessible routes shall consist of one or more of the following components: walking surfaces with a running slope not steeper than 1:20, doorways, ramps, curb ramps excluding the flared sides, elevators, and platform lifts. All components of an accessible route shall comply with the applicable requirements of Chapter 4.
- ADAAG 403 Walking Surfaces ADAAG 403.4 Changes in Level. Changes in level shall comply with 303
- ADAAG 303.4 Ramps.
Changes in level greater than ½ inch high shall be ramped, and shall comply with 405 or 406.
6. Required minimum maneuvering clearance not provided at interior side of entrance door.
 7. Non-compliant change in floor level within required maneuvering clearance at interior side of entrance door.
- ADAAG 206 Accessible Routes ADAAG 206.1 General.
Accessible routes shall be provided in accordance with 206 and shall comply with Chapter 4.
- ADAAG 206.2 Where Required.
Accessible routes shall be provided where required by 206.2.
- ADAAG 206.2.1 Site Arrival Points.
At least one accessible route shall be provided within the site from accessible parking spaces and accessible passenger loading zones; public streets and sidewalks; and public transportation stops to the accessible building or facility entrance they serve.

ADAAG 206.4 Entrances.

Entrances shall be provided in accordance with 206.4. Entrance doors, doorways, and gates shall comply with 404 and shall be on an accessible route complying with 402.

ADAAG 206.4.1 Public Entrances.

In addition to entrances required by 206.4.2 through 206.4.9, at least 60 percent of all public entrances shall comply with 404.

ADAAG 207 Accessible Means of Egress ADAAG 207.1 General.

Means of egress shall comply with section 1003.2.13 of the International Building Code (2000 edition and 2001 Supplement) or section 1007 of the International Building Code (2003 edition) (incorporated by reference, "Referenced Standards" in Chapter 1)

ADAAG 404.2.4 Maneuvering Clearances.

Minimum maneuvering clearances at doors and gates shall comply with 404.2.4.

Maneuvering clearances shall extend the full width of the doorway and the required latch side or hinge side clearance.

ADAAG 404.2.4.4 Floor or Ground Surface.

Floor or ground surface within required maneuvering clearances shall comply with 302. Changes in level are not permitted.

8. Inaccessible bar.

9. Non-compliant height of bar exceeds maximum height allowance.

10. Required minimum knee and toe clearance not provided at bar.

11. Portion of bar required to be accessible not provided.

ADAAG 226 Dining Surfaces and Work Surfaces ADAAG 226.1 General.

Where dining surfaces are provided for the consumption of food or drink, at least 5 percent of the seating spaces and standing spaces at the dining surfaces shall comply with 902.

ADAAG 902 Dining Surfaces and Work Surfaces ADAAG 902.1 General.

Dining surfaces and work surfaces shall comply with 902.2 and 902.3.

Advisory 902.1 General.

Dining surfaces include, but are not limited to, bars, tables, lunch counters, and booths.

ADAAG 902.2 Clear Floor or Ground Space.

A clear floor space complying with 305 positioned for a forward approach shall be provided.

Knee and toe clearance complying with 306 shall be provided.

ADAAG 902.3 Height.

The tops of dining surfaces and work surfaces shall be 28 inches (710 mm) minimum and 34 inches (865 mm) maximum above the finish floor or ground.

ADAAG 306.2 Toe Clearance.

ADAAG 306.2.3 Minimum Required Depth.

Where toe clearance is required at an element as part of a clear floor space, the toe clearance shall extend 17 inches (430 mm) minimum under the element.

ADAAG 306.2.5 Width.

Toe clearance shall be 30 inches (760 mm) wide minimum.

ADAAG 306.3 Knee Clearance.

ADAAG 306.3.3 Minimum Required Depth.

Where knee clearance is required under an element as part of a clear floor space, the knee clearance shall be 11 inches deep minimum at 9 inches above the ground, and 8 inches deep minimum at 27 inches (685 mm) above the finish floor or ground.

ADAAG 306.3.5 Width.

Knee clearance shall be 30 inches (760 mm) wide minimum.

12. Inaccessible dining tables.

13. Required minimum knee and toe clearance not provided at dining tables.

14. A minimum percentage of existing dining tables required to be accessible not provided.

ADAAG 226 Dining Surfaces and Work Surfaces ADAAG 226.1 General.

Where dining surfaces are provided for the consumption of food or drink, at least 5 percent of the seating spaces and standing spaces at the dining surfaces shall comply with 902.

ADAAG 902 Dining Surfaces and Work Surfaces ADAAG 902.1 General.

Dining surfaces and work surfaces shall comply with 902.2 and 902.3.

ADAAG 902.2 Clear Floor or Ground Space.

A clear floor space complying with 305 positioned for a forward approach shall be provided.

Knee and toe clearance complying with 306 shall be provided.

ADAAG 306.2 Toe Clearance.

ADAAG 306.2.3 Minimum Required Depth.

Where toe clearance is required at an element as part of a clear floor space, the toe clearance shall extend 17 inches (430 mm) minimum under the element.

ADAAG 306.2.5 Width.

Toe clearance shall be 30 inches (760 mm) wide minimum.

ADAAG 306.3 Knee Clearance.

ADAAG 306.3.3 Minimum Required Depth.

Where knee clearance is required under an element as part of a clear floor space, the knee clearance shall be 11 inches deep minimum at 9 inches above the ground, and 8 inches deep minimum at 27 inches (685 mm) above the finish floor or ground.

ADAAG 306.3.5 Width.

Knee clearance shall be 30 inches (760 mm) wide minimum.

15. Required minimum maneuvering clearance not provided at restroom door.

ADAAG 206 Accessible Routes ADAAG 206.1 General.

Accessible routes shall be provided in accordance with 206 and shall comply with Chapter 4.

ADAAG 402 Accessible Routes ADAAG 402.1 General.

Accessible routes shall comply with 402.

ADAAG 402.2 Components.

Accessible routes shall consist of one or more of the following components: walking surfaces with a running slope not steeper than 1:20, doorways, ramps, curb ramps excluding the flared sides, elevators, and platform lifts. All components of an accessible route shall comply with the applicable requirements of Chapter 4.

ADAAG 404.2.4 Maneuvering Clearances.

Minimum maneuvering clearances at doors and gates shall comply with 404.2.4.

Maneuvering clearances shall extend the full width of the doorway and the required latch side or hinge side clearance.

16. Non-compliant door knob at restroom door requires twisting of the wrist.

ADAAG 404 Doors, Doorways, and Gates ADAAG 404.1 General.

Doors, doorways, and gates that are part of an accessible route shall comply with 404.

ADAAG 404.2.7 Door and Gate Hardware.

Handles, pulls, latches, locks, and other operable parts on doors and gates shall comply with 309.4

ADAAG 309.4 Operation.

Operable parts shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate operable parts shall be 5 pounds maximum.

17. Non-compliant door lock at restroom door requires twisting of the wrist.

ADAAG 404 Doors, Doorways, and Gates ADAAG 404.1 General.

Doors, doorways, and gates that are part of an accessible route shall comply with 404.

ADAAG 404.2.7 Door and Gate Hardware.

Handles, pulls, latches, locks, and other operable parts on doors and gates shall comply with 309.4

ADAAG 309.4 Operation.

Operable parts shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate operable parts shall be 5 pounds maximum.

18. Inaccessible lavatory in restroom.

19. Required minimum clear floor space not provided at lavatory in restroom.

ADAAG 606 Lavatories and Sinks.

ADAAG 606.2 Clear Floor Space.

A clear floor space complying with 305, positioned for a forward approach, and knee and toe clearance complying with 306 shall be provided.

ADAAG 305.3 Size.

The clear floor or ground space shall be 30 inches (760 mm) minimum by 48 inches (1220 mm) minimum.

20. Required minimum knee and toe clearance not provided at lavatory in restroom.

ADAAG 606 Lavatories and Sinks.

ADAAG 606.2 Clear Floor Space.

A clear floor space complying with 305, positioned for a forward approach, and knee and toe clearance complying with 306 shall be provided.

ADAAG 306.2 Toe Clearance.

ADAAG 306.2.3 Minimum Required Depth.

Where toe clearance is required at an element as part of a clear floor space, the toe clearance shall extend 17 inches (430 mm) minimum under the element.

ADAAG 306.2.5 Width.

Toe clearance shall be 30 inches (760 mm) wide minimum.

ADAAG 306.3 Knee Clearance.

ADAAG 306.3.3 Minimum Required Depth.

Where knee clearance is required under an element as part of a clear floor space, the knee clearance shall be 11 inches deep minimum at 9 inches above the ground, and 8 inches deep minimum at 27 inches (685 mm) above the finish floor or ground.

ADAAG 306.3.5 Width.

Knee clearance shall be 30 inches (760 mm) wide minimum.

21. Insulation of pipes and water lines under the lavatory in restroom not provided as required.

ADAAG 606 Lavatories and Sinks.

ADAAG 606.5 Exposed Pipes and Surfaces.

Water supply and drain pipes under lavatories and sinks shall be insulated or otherwise configured to protect against contact. There shall be no sharp or abrasive surfaces under lavatories and sinks.

22. Non-compliant height of lavatory in restroom exceeds maximum height allowance.

ADAAG 606 Lavatories and Sinks.

ADAAG 606.1 General.

Lavatories and sinks shall comply with 606.

ADAAG 606.3 Height.

Lavatories and sinks shall be installed with the front of the higher of the rim or counter surface 34 inches (865 mm) maximum above the finish floor or ground.

23. Inaccessible paper towel dispenser in restroom.

24. Non-compliant mounted height of paper towel dispenser in restroom exceeds maximum height allowance.

ADAAG Advisory 606.1 General.

If soap and towel dispensers are provided, they must be located within the reach ranges specified in 308.

ADAAG 308.2 Forward Reach. ADAAG 308.2.1 Unobstructed.

Where a forward reach is unobstructed, the high forward reach shall be 48 inches maximum and the low forward reach shall be 15 inches minimum above the finish floor or ground.

ADAAG 308.2.2 Obstructed High Reach.

Where a high forward reach is over an obstruction, the clear floor space shall extend beneath the element for a distance not less than the required reach depth over the obstruction. The high forward reach shall be 48 inches maximum where the reach depth is 20 inches maximum. Where the reach depth exceeds 20 inches, the high forward reach shall be 44 inches maximum and the reach depth shall be 25 inches maximum.

ADAAG 308.3 Side Reach. ADAAG 308.3.1 Unobstructed.

Where a clear floor or ground space allows a parallel approach to an element and the side reach is unobstructed, the high side reach shall be 48 inches maximum and the low side reach shall be 15 inches minimum above the finish floor or ground.

ADAAG 308.3.2 Obstructed High Reach.

Where a clear floor or ground space allows a parallel approach to an element and the high side reach is over an obstruction, the height of the obstruction shall be 34 inches maximum and the depth of the obstruction shall be 24 inches maximum. The high side reach shall be 48 inches maximum for a reach depth of 10 inches maximum. Where the reach depth exceeds 10 inches, the high side reach shall be 46 inches maximum for a reach depth of 24 inches maximum.

25. Inaccessible water closet in restroom.

26. Required minimum clearance not provided at water closet in restroom.

ADAAG 604 Water Closets and Toilet Compartments

ADAAG 604.3 Clearance.

Clearances around water closets and in toilet compartments shall comply with 604.3.

ADAAG 604.3.1 Size.

Clearance around a water closet shall be 60 inches (1525 mm) minimum measured perpendicular from the side wall and 56 inches (1420 mm) minimum measured perpendicular from the rear wall.

27. Required grab bar not provided on rear wall of water closet in restroom.

ADAAG 604 Water Closets and Toilet Compartments

ADAAG 604.5 Grab Bars.

Grab bars for water closets shall comply with 609.

Grab bars shall be provided on the side wall closest to the water closet and on the rear wall.

28. Non-compliant position of plumbing valves located directly behind toilet seat of water closet in restroom.

ADAAG 604 Water Closets and Toilet Compartments.

ADAAG Advisory 604.6 Flush Controls.

If plumbing valves are located directly behind the toilet seat, flush valves and related plumbing can cause injury or imbalance when a person leans back against them. To prevent causing injury or imbalance, the plumbing can be located behind walls or to the side of the toilet; or if approved by the local authority having jurisdiction, provide a toilet seat lid.

29. Inaccessible urinal in restroom.

30. Required clear floor space not provided at urinal in restroom.

ADAAG 605 Urinals

ADAAG 605.3 Clear Floor Space.

A clear floor or ground space complying with 305 positioned for forward approach shall be provided.

ADAAG 305.3 Size.

The clear floor or ground space shall be 30 inches (760 mm) minimum by 48 inches (1220 mm) minimum.

“[A] defendant who defaults thereby admits all well-pleaded factual allegations contained in the complaint” but “a district court need not agree that the alleged facts constitute a valid cause of action.” *City of New York v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 137 (2d Cir. 2011). “[A] district court is required to determine whether the plaintiff’s allegations establish the defendant’s liability as a matter of law.” *Id.*

Subject-matter jurisdiction is proper, as Plaintiff brings his claim under federal law. Personal jurisdiction is also proper, as the Complaint alleges that Defendants maintain a principal place of business in New York State.

The Complaint adequately alleges that Plaintiff is entitled to injunctive relief under the ADA. Title III of the ADA states that “[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, [and] services . . . of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.” 42 U.S.C. § 12182(a). To prevail on a claim under Title III, a plaintiff must establish “that (1) he or she is disabled within the meaning of the ADA; (2) that the defendant[] own[s], lease[s], or operate[s] a place of public accommodation; and (3) that the defendant[] discriminated against the plaintiff within the meaning of the ADA.” *Roberts v. Royal Atl. Corp.*, 542 F.3d 363, 368 (2d Cir. 2008); *accord Chalas v. Pork King Good*, No. 22 Civ. 03894, 2023 WL 3293639, at *2 (S.D.N.Y. May 5, 2023). The Complaint alleges that “Plaintiff has a spinal cord T-12 injury and is bound to ambulate in a wheelchair,” thus falling within the class of persons protected by the ADA, *see* 42 U.S.C. § 12183(a)(2); *Roberts*, 542 F.3d at 368. The facility, which is owned by Defendant Kedo LLC and leased by Defendant El Paso 116 Corp. is a restaurant, which is a “place of accommodation” under the ADA. *See* 42 U.S.C. § 12181(7)(B). A defendant discriminates if it fails to remove any existing barriers to accessibility where such removal “is readily achievable.” 42 U.S.C. § 12182(b)(2)(A)(iv); *Roberts*, 542 F.3d at 369. The Complaint alleges existing barriers to accessibility, which Defendants have failed to remove, and that the removal of those barriers is readily achievable.

B) Plaintiff shall serve a copy of this Default Final Judgment, *and* all supporting papers by Certified U.S. Mail and file proof of such service on the record. **by August 30, 2024.**

~~C) Plaintiff shall have 180 days after date of the Court's entry of this Final Default Judgment to file a motion to tax costs and award reasonable attorney's fees and shall file all an affirmation in support of that motion, a copy of Plaintiff's fee statements or time entry billing, and receipts for costs sought in said motion.~~

If Plaintiff intends to file a motion for attorneys' fees and costs, Plaintiff shall file a letter by **September 4, 2024**, stating its intent and requesting a referral to Magistrate Judge Parker for a damages inquest.

DONE and ORDERED in New York, New York, this 26 day of August, 2024.
The Clerk of Court is respectfully directed to close the motion at Dkt. No. 20.



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE